

November 30, 2018

Via ECFS Filing

Ms. Marlene Dortch
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

***Re: Updating the Intercarrier Compensation Regime To Eliminate Access Arbitrage, WC
Docket No. 18-155***

Dear Ms. Dortch:

These ex parte Comments are filed to address the conflicting comments submitted in this proceeding and urge the Commission to take a more expansive look at the facts. Unlike other rulemaking proceedings, this intercarrier compensation proceeding is devoid of a factual record that would lead to an informed decision. Instead, the interexchange carriers (“IXCs”) would have the Commission provide them a windfall by not having to compensate rural carriers for terminating traffic that they are paid themselves to terminate; central equal access (“CEA”) providers are satisfied as long as they are able to maintain their compensation for handling traffic; and some competitive local exchange carriers (“CLECs”) are willing to eliminate or cap another carrier’s transport and mileage charges provided they are not adversely harmed. Understandably, parties in rulemaking proceedings advocate for results that further their interests, but what makes this proceeding different is the lack of a factual record to help guide a informed decision by the Commission.

The Native American Telecom Companies (Native American Telecom, LLC and Native American Telecom – Pine Ridge, LLC) are independent rural carriers serving some of the most rural, low-income areas of the country that lack access to many of the basic necessities of life. Rather than abandoning these areas of the country, as many large companies have done and continue to do, the Native American Telecom Companies have embraced the challenges of serving these areas and have developed an innovative approach to providing affordable telecommunications and information services based upon sound economic principles. By

working with companies that have previously shied away from locating in rural areas, especially rural Tribal lands, the Native American Telecom Companies have brought hope (and new services) to residents of the Pine Ridge and Crow Creek Indian reservations.

The Native American Telecom Companies' approach to serving their markets is like any other business initiative, except they took the risky initial first step of establishing a broadband infrastructure to facilitate economic development rather than waiting for business to develop and then serving the market. This approach has worked with many residents now having, for the first time, access to affordable broadband services and digital literacy training.¹ No services are being subsidized by the Native American Telecom Companies. Instead, the significant cost of serving these rural areas are being borne by "cost causers" – the consumers, business customers, and carriers delivering traffic to the Native American Telecom companies.

Cost of Serving Rural Areas Is Significant

The Native American Telecom Companies were founded as part of a broader plan to establish telecommunications companies linked together to form an enterprise serving the unique needs of residents of Tribal lands. It soon became apparent that the simple act of establishing a high-speed broadband connection to the Internet was either impossible due to the lack of facilities in rural areas or it was cost prohibitive. In the end, high-speed connections were established only in Fort Thompson and Pine Ridge after several years of work and with the assistance of the local telephone companies and the intermediate carrier. The cost of service, however, is prohibitively expensive without new economic drivers, such as telecommunication services. Over the years, the Native American Telecom Companies have endured false narratives about its business in the battle between companies exerting their market power to the disadvantage of small rural carriers like the Native American Telecom Companies.²

¹ See Native American Telecom Companies' Ex Parte filed in this proceeding on October 26, 2018. The Native American Telecom Companies carry their own traffic, at significant costs, from their tandem in Sioux Falls to their end offices in Pine Ridge and Fort Thompson, eliminating the need for a CEA provider.

² The Native American Telecom Companies operate in a manner that is fully consistent with all applicable federal and Tribal requirements. The Native American Telecom Companies have extended invitations to regulators, politicians, IXC's, and others to come to Pine Ridge and Fort Thompson to see firsthand its operations and the important role they serve in the economy and the marketplace.

The Native American Telecom Companies incur very significant costs to bring broadband services to their markets. These costs are borne by the “cost causers.” There is no so-called “mileage pumping.” The mileage is the mileage and, to the extent a carrier wants to carry its traffic to Fort Thompson and Pine Ridge, they are free to do so. It would be completely contrary to sound economic principles to require the Native American Telecom Companies to pay for the cost of transporting other carriers’ traffic. We already pay for the cost of terminating other carriers’ traffic. To now require us to pay for the transport of other carriers’ traffic or even cap transport at a certain number of miles would be unreasonably discriminatory and, quite simply, drive us out of business.

Proposed Solution

The Native American Telecom Companies are not convinced there is a problem that requires a regulatory solution. While intercarrier compensation issues continue to plague the industry, problems are being resolved through negotiation, commercial arrangements, and, in some cases, legal and regulatory complaints. Over the last few years, the intercarrier compensation reforms adopted in 2011 have brought about significant changes with rural carriers no longer receiving arguably a windfall for terminating large amounts of traffic. While large carriers still exert their market power to the disadvantage of smaller carriers (an issue across all businesses), solutions are being implemented in the marketplace and broad-based regulatory intervention is not necessary. If anything, the Native American Telecom Companies suggest that the Commission adopt an expedited formal complaint or arbitration process to deal with any intercarrier compensation disputes, similar to the arbitration provisions of the 1996 Act. For example, the back and forth between parties in this proceeding arguing about the facts could easily be resolved through an evidence-based complaint or arbitration proceeding rather than an advocacy-based rulemaking proceeding.

Any questions concerning this filing should be directed to the undersigned.

Respectfully submitted,

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